

I. Telephone Conference with Examiner

Applicants' representatives wish to thank Examiner Vital for his courtesy in granting and conducting a telephone conference, held on September 9, 2004, wherein the rejections of claims 11 and 19 were discussed. The substance of that telephone conference is summarized herein.

II. Allowable Subject Matter

Applicants note with appreciation that in ¶s 11 and 12 of the Office Action, claims 1-10 are allowed and claim 13 is identified as reciting allowable subject matter.

Applicants would like to bring to the Examiner's attention that claim 26 is also believed to be allowed on the basis of its dependency from claim 1, and appears to have been inadvertently omitted from the listing of allowed claims in the Office Action.

III. Claim Rejections Under 35 U.S.C. §102(e) Over Chin

In ¶6 of the Office Action, independent claim 19 and associated dependent claims 20, 23-24 and 28 are rejected under 35 U.S.C. §102(e) as purportedly being anticipated by U.S. Patent No. 6,000,020 ("Chin"). These rejections are respectfully traversed.

a. Claim 19

Claim 19 recites a method comprising a step of transferring data from at least one of a plurality of primary storage elements to a secondary storage element, the plurality of primary storage elements comprising a primary storage element that serves as primary non-backup storage for a host computer that is separate from and coupled to the primary storage element.

As discussed during the telephone conference, Chin does not disclose transferring data from at least one of a plurality of primary storage elements to a secondary storage element, as recited in claim 19. Rather, data is transferred from transaction server 16 to mirrored storage disk drive banks 32, 34 in a mirrored write transaction. Thus, no data is transferred from disk drive banks 12, 14 to mirrored storage disk drive banks 32, 34. Applicants' representatives directed the Examiner to col. 7, lines 40-43; col. 8, lines 44-48; and col. 49, lines 36-46, as exemplary passages providing further discussion of this distinction.

In view of the foregoing, Chin does not disclose a method comprising a step of transferring data from at least one of a plurality of primary storage elements to a secondary storage element, as recited in claim 19. Although Examiner Vital reserved final judgment as to whether claim 19 distinguishes over Chin, he indicated that he appreciated the above-disclosed distinction pointed out during the telephone conference and would reexamine the Chin reference in consideration of the same. Withdrawal of the rejection of claim 19 is respectfully requested.

Claims 20-25 and 28 depend from claim 19 and are allowable for at least the same reasons.

IV. Claim Rejections Under 35 U.S.C. §103(a) Over Tamer in View of Misinai and Cotugno

In ¶8 of the Office Action, independent claim 11 and associated dependent claims 12, 14-18 and 27 are rejected under 35 U.S.C. §103(a) as purportedly being obvious over U.S. Patent No. 6,035,412 ("Tamer") in view of U.S. Patent No. 5,848,241 ("Misinai") and U.S. Patent No. 6,085,266 ("Cotugno"). Applicants respectfully traverse these rejections.

Claim 11 recites a computer system that comprises a heterogeneous plurality of host computers including at least a first host computer comprising a first platform and a second host computer comprising a second platform different from the first platform and a single backup controller capable of backing up data stored from both the first and second host computers on a plurality of primary storage devices to a secondary storage device, wherein the data stored from the first host computer on the plurality of primary storage devices has a first format established by the first platform and the data stored from the second host computer on the plurality of primary storage devices has a second format established by the second platform.

No combination of Tamer, Misinai, and Cotugno discloses or suggests a single backup controller capable of backing up data stored in first and second formats established by host computers having first and second platforms, respectively.

Tamer discloses the concept of a single controller capable of backing up data from two **homogeneous** hosts. Tamer does not teach a single controller backing up data from heterogeneous hosts.

Misinai discloses a single controller that converts data of a first format (DOM 1) corresponding to a first platform and data of a second format (DOM 2) corresponding to a

second platform to a third “common” format that is stored on a storage device (See col. 2, lines 11-20, 31-34 and 44-50 and Fig. 1 of U.S. Patent No. 5,758,125 (“Misinaï ‘125”) which is incorporated by reference in Misinaï at lines 19-23 of col. 18). Thus, at most, Misinaï would have motivated a person of ordinary skill in the art to modify the Tamer system to include heterogeneous computer systems that share data items stored in a **single format** on a data storage system. Misinaï does not disclose a single backup controller capable of backing up data stored on primary storage devices in different formats established by heterogeneous host computers.

During the telephone conference, the Examiner questioned whether the “secondary storage 6” could be considered backup storage. Misinaï ‘125 describes three types of storage – “main storage” which is local volatile memory on the computer (col. 4, lines 12-16); “cache” which is a small local volatile memory on the computer (col. 4, lines 17-21); and “secondary storage/mass storage” which is direct access storage that resides on an external device (like a disk). It’s not volatile, and accessing it may take much longer than accessing any other type of storage.” (col. 4, lines 22-24 of Misinaï ‘125). Hence, it is clear that “secondary storage 6” is not backup storage, but rather is the non-volatile storage.

As discussed during the telephone conference with the Examiner, further combining the teachings of Cotugno with those of Tamer and Misinaï does not further the analysis outlined above, as Cotugno also does not teach or suggest a single backup controller capable of backing up data stored on primary storage devices in different formats from heterogeneous host computers. During the telephone conference, the Examiner noted that he relied on Cotugno merely for the teaching that different computer systems may have different platforms. Applicants noted that in this respect, Cotugno adds nothing to the teachings of Misinaï, as Misinaï teaches that different computers may have different platforms (see Col. 6, lines 32-35 of Misinaï ‘125).

In view of the foregoing, the combined teachings of Tamer, Misinaï, and Cotugno do not teach or suggest a computer system comprising a single backup controller capable of backing up data stored from first and second host computers on a plurality of primary storage devices to a secondary storage device, wherein the data stored from the first host computer on the plurality of primary storage devices has a first format established by the first platform and the data stored

from the second host computer on the plurality of primary storage devices has a second format established by the second platform, as recited in claim 11.

Thus, it is respectfully asserted that claim 11 patentably distinguishes over the prior art of record, such that the rejection of claim 11 should be withdrawn.

Claims 12-18 and 27 depend from claim 11 and are allowable for at least the same reasons.

### III. Other Rejections of Dependent Claims

In ¶9 of the Office Action, claims 21 and 25 are rejected under 35 U.S.C. §103(a) as being obvious over Chin in view of U.S. Patent No. 5,680,580 ("Beardsley"). In ¶10 of the Office Action, claim 22 is rejected under 35 U.S.C. §103(a) as being obvious over Chin in view of Misinaï.

Claims 21-22 and 25 depend from independent claim 19 and are believed to be allowable for at least the same reasons. Accordingly, for the sake of brevity, Applicants believe that it is unnecessary at this time to individually argue the allowability of claims 21-22 and 25, or any of the other dependent claims mentioned above, and reserve the right to specifically address the patentability these claims in the future, if deemed necessary.

### Conclusion

In view of the foregoing remarks, this application is believed to be in condition for allowance. A notice to this effect is respectfully requested. If, after reviewing this response, the Examiner believes that the application is not in condition for allowance, he is requested to call the undersigned at the number listed below to discuss any outstanding issues relating to the allowability of the application.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicants hereby request any necessary extension of time. If there is a fee

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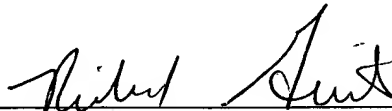
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occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to deposit account No. 23/2825.

Respectfully submitted,

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